

REMARKS

This communication is considered fully responsive to the Office action mailed February 10, 2005. Claims 1, 5-11, 13, 14-22, 24-36, 39-42, 44-48 and 50-51 have been amended. Claims 2, 3, 4, 37, 43 and 49 have been cancelled. No new matter has been added by the amendments. In view of the amendments to the claims and the following arguments, reconsideration and reexamination are respectfully requested.

Claim Objections

Applicant has corrected claim 5 as indicated on page 2, paragraph 2 of the Communication dated February 10, 2005.

Claim Rejections - 35 U.S.C. §112

Claims 1, 4 and 28 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has corrected the three “conFIG.d” typos and therefore the rejection is traversed.

Claim Rejections - 35 U.S.C. §102(b) (Chao)

Claims 1-4, 12, 23, 29 and 30 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,631,716 to Chao (“Chao”). Applicants have cancelled claims 2-4. For the remaining pending claims, the Applicants traverse this rejection.

Independent claims 1 and 29, as amended, are generally directed to a removable lens unit that can be snap fit into a lens area of a frame. Significantly, each lens unit has a lip that only allows insertion of the unit from a direction from the eye of the user towards the lens area, and also inhibits the movement of the lens frame past the lens area. The lip aspect of the amended

claims 1 and 29 is illustrated in the application in FIGS. 25 and described on page 20. The lip also forms an additional seal between the frame and the lens unit. The single direction snap fit provides a better fit and seal between the lens unit and the frame and provides a level of protection ensuring that the lens unit will not pop out of the frame during vigorous activity such as swimming, biking or kayaking.

Chao is directed to a frame and lens unit that may be inserted into the frame from either direction. Chao's insertion arrangement is undesirable for many reasons. For one, over the course of many uses, the retaining strength of the portion of the frame that receives the lens unit is diminished. Furthermore, since the frame assembly does not have the lip of amended claims 1 and 29, during use, the lens unit may pop out and become damaged.

Since Chao neither teaches nor suggests a lip that prevents the insertion of the lens from outside the lens area toward the user's face and keeps the lens unit from dislodging from the frame, the rejection of independent claims 1 and 29 and claims 2-4, 12, 23 and 30 that depend from claim 1 and 29 under §102(b) relying on Chao is improper and should be withdrawn. A prompt issuance of a notice of allowance for claims 1-4, 12, 23, 29 and 30 is therefore requested.

Claim Rejections - 35 U.S.C. §103(a) (Chao in view of Neef)

Claims 24-28 and 42-46 stand rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over Chao in view of U.S. Patent No. 4,802,754 to Neef ("Neef"). Dependent claim 43 has been cancelled, and independent claim 42 has been amended to include the limitations of dependent claim 43. Accordingly, the Applicant traverses this rejection.

Independent claim 42, as amended, is generally directed to a nose piece having a nose pad aperture and a nose pad that is removably positioned in the nose pad aperture. The nose pad is now defined as having a first and second nose surface that, when one or the other surface is

orientated toward the nose of the user, creates two different fits. This “double-sided and reversible” aspect of the nose pad in the amended claim 42 is illustrated in the application in FIGS. 19-21 and described on pages 19-20. Importantly, the claimed nose pad is effectively a reversible, double-sided nose pad that can change the tightness of the grip of the pad on the nose of the user using a single nose pad. The reversible, double-sided nature of the nose pad in amended claim 42 eliminates the need for multiple nose pads that change the tightness of the fit of the nose piece on the user’s nose.

Neef, on the other hand, is directed to using different sized nose pad pairs to change the spectacle frame to the characteristics of the facial form of the user. The nose pad pairs are shown in the figures and described in the text as having differing shapes, with only a single shape that is designed to be clipped into the recesses of the pad legs of the spectacle frame at any given time. Accordingly, the Neef nose pad pairs are non-reversible and single-sided. Therefore, if the user desires to tighten or loosen the fit of the Neef frame resting on the user’s nose, the second fit requires a second, different nose pad.

Unlike amended claim 42, the portion of the nose pad pairs of the Neef spectacle frame that contact the user’s nose are single-sided and are not reversible to provide differing fits with a single nose pad. Since the combination of Chao and Neef neither teaches nor suggests a reversible double-sided nose pad, the rejection of independent claims 42 and claims 44-46 that depend from claim 42 under §103(a) is improper and should be withdrawn.

Claims 24-28 depend from independent claim 1. In addition to the reasons provided for claim 1, the art of record, including Neef, does not teach or suggest the use of a double-sided and reversible nose piece. Since dependent claims 24-28 contain similar limitations having a double sided and reversible nose piece, for the same reasons provided above arguing for allowing

independent claim 42, dependent claims 24-28 are allowable over the combination of Chao and Neef as well.

Claim Rejections - 35 U.S.C. §102(b) (Nishiyama)

Claims 1, 2, 5-11, 31-33 stand rejected under 35 U.S.C. §102(b) as being purportedly anticipated by U.S. Patent No. 5,093,940 to Nishiyama (“Nishiyama”). Claim 2 has been cancelled. For the remaining claims, the Applicants traverse this rejection.

As stated above for the argument relating to Chao, independent claims 1 and 29, as amended, are generally directed to a removable lens unit that can be snap fit into a lens area of a frame. Significantly, each lens unit has a lip that only allows insertion of the unit from a direction from the eye of the user towards the lens area, and also inhibits the movement of the lens frame past the lens area. The lip also forms an additional seal between the frame and the lens unit. The single direction snap fit provides a better fit and seal between the lens unit and the frame and provides a level of protection ensuring that the lens unit will not pop out of the frame during vigorous activity such as swimming, biking or kayaking.

Nishiyama is directed to a goggle assembly having a frame and lens unit, wherein the lens unit may be inserted into the frame from either direction. Similar to the discussion above for Chao, the retaining strength of the frame assembly is diminished with repeated use. Further, since the frame assembly does not have the lip of amended claims 1 and 29, the lens unit may pop out and become damaged during activity.

Since Nishiyama neither teaches nor suggests a lip that prevents the insertion of the lens from outside the lens area toward the user’s face and keeps the lens unit from dislodging from the frame during use, the rejection of independent claim 1 and claims 5-11 and 31-33 that depend

from claims 1 and 29 respectively under §102(b) relying on Nishiyama is improper and should be withdrawn.

Claim Rejection - 35 U.S.C. §102(b) (Smerdon)

Claim 34 is rejected under 35 U.S.C. §102(b) as being purportedly anticipated by U.S. Patent No. 6,092,897 to Smerdon (“Smerdon”). Claim 34 has been amended. The Applicants traverse this rejection.

Independent claim 34 is now generally directed to a two part strap. The first part is the buoyant retaining strap that contacts the back of the user head. The second part is a ribbon that is looped through the apertures in the first and second elongate sections and through a locking means. The locking means increases the tension on the ribbon to cause the buoyant retraining strap to securely contact the user’s head.

Smerdon is directed to a non-floating adjustable retainer for eyeglasses. The adjustable retainer has a first cord and a second cord that is held together by a cord lock. In addition to the non-floating characteristic of the cord, Smerdon does not teach or suggest the two part strap of independent claim 34. Smerdon does not have a buoyant retaining strap that is configured to contact the back of a user’s head. Smerdon also does not have a single ribbon that loops through both the first and second elongate sections and the buoyant retaining strap before terminating at a locking means that can increase the tension on the ribbon thereby securing the strap against a user’s head.

Since Smerdon neither teaches nor suggests a two-part strap, the rejection of independent claim 34 under §102(b) is improper and should be withdrawn.

Claim Rejection - 35 U.S.C. §103(a) (Smerdon in view of Gill)

Claim 35 is rejected under 35 U.S.C. §103(a) as being purportedly anticipated by U.S. Patent No. 6,092,897 to Smerdon in view of U.S. Patent No. 5,087,118 to Gill (“Gill”). For the reasons stated above with respect to independent claim 34, dependent claim 35 is allowable as well.

Claim Rejection - 35 U.S.C. §102(e) (Bonacci)

Claims 36-41 are rejected under 35 U.S.C. §102(e) as being purportedly anticipated by U.S. Patent No. 6,513,925 to Bonacci (“Bonacci”). Dependent claim 37 has been cancelled, and independent claim 36 has been amended to include the limitations of dependent claim 37. As such, the Applicants traverse this rejection.

Independent claim 36, as amended, is generally directed to a frame having a first and second elongate section with each section having at least one grip aperture. Each grip aperture contains a head grip. The head grip is now defined as having a first and second exterior surface that, when one or the other surface is orientated toward the head of the user, creates two different distances between the elongate sections and the users head. This “double-sided and reversible” aspect of the head grip on the amended claim 36 is illustrated in the application in FIGS. 3-6 and 18 and described on pages 12-15. The claimed head grip is a reversible, double-sided head grip that can change the tightness of the grip of the frame to the head of the user using a single head grip. The reversible, double-sided nature of the head grip in amended claim 36 eliminates the need for multiple head grips to change the tightness of the fit of the frame to the user’s head.

Bonacci, on the other hand, is directed to floating eyewear and floating pads for permitting the floatation of the Bonacci eyewear in water. To operate as intended, the floating pads are designed to be buoyant in water and, in use, are press fit into temple openings in the

side temples of the frame. The floating pads are neither intended nor described as changing the fit of the frame to the user's head. The float pads are shown in the figures and described in the text as having differing shapes with only a single side that is designed to be press fit into the temple openings. Accordingly, the Bonacci float pads are non-reversible and single-sided. Therefore, if the user desires to tighten or loosen the fit of the Bonacci frame to the head, the second fit requires a second, different floating pad.

Unlike amended claim 36, the portion of the floating pads of the Bonacci eyewear that contact the user's head are single-sided and are not reversible to provide differing fits with a single float pad. Since Bonacci neither teaches nor suggests a reversible double-sided head grip, the rejection of independent claims 36 and claims 38-41 that depend from claim 36 under §102(e) relying on Bonacci is improper and should be withdrawn. A prompt issuance of a notice of allowance for claims 36 and 38-41 is therefore requested.

Claim Rejections - 35 U.S.C. §103(a) (Gaspari in view of Bonacci)

Claims 12-21 stand rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over U.S. Patent No. 4,021,103 to Gaspari ("Gaspari") in view of Bonacci. The Applicant traverses this rejection.

In addition, since Bonacci neither teaches nor suggests a reversible double-sided head grip, the rejection of claims 12-21 under §103(a) relying on the combination of Gaspari and Bonacci is improper and should be withdrawn. A prompt issuance of a notice of allowance for claims 12-21 is therefore requested.

Claim Rejections - 35 U.S.C. §103(a) (Gaspari in view of Bonacci and Gill)

Claim 22 stands rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over Gaspari in view of Bonacci as applied to claims 13-21, and in further view of Gill. The Applicant traverses this rejection.

In addition to the reasons provided above for claims 12-21, since Gill neither teaches nor suggests a reversible double-sided nose pad, the rejection of claim 22 under 103(a) relying on the combination of Gaspari, Bonacci and Gill is improper and should be withdrawn.

Claim Rejections - 35 U.S.C. §102(b) (Gaspari)

Claims 1-4, and 47 stand rejected under 35 U.S.C. §102(b) as being purportedly anticipated by Gaspari. Claims 2-4 have been cancelled. For the remaining pending claims, the Applicant traverses this rejection.

As stated previously for independent claim 1, independent claim 47, as amended, is generally directed to a removable lens unit that can be snap fit into a lens area of a frame. Significantly, each lens unit has a lip that only allows insertion of the unit from a direction from the eye of the user towards the lens area, and also inhibits the movement of the lens frame past the lens area. The lip also forms a seal between the frame and the lens unit. The single direction snap fit provides a better fit and seal between the lens unit and the frame and provides a level of protection ensuring that the lens unit will not pop out of the frame during vigorous activity such as swimming, biking or kayaking.

Gaspari, like Chao and Nishiyama, is directed to a frame and lens unit that may be inserted into the frame from either direction. As stated previously, over time, the holding power of the portion of the frame that receives the lens unit is diminished. Furthermore, since the frame

assembly does not have the lip of amended claims 1 and 47, the lens unit may pop out when in use by the user and become lost or damaged.

Since Gaspari, like Chao and Nishiyama, neither teaches nor suggests a lip that prevents the insertion of the lens from outside the lens area toward the user's face and keeps the lens unit from dislodging from the frame, the rejection of independent claims 1 and 47 under §102(b) relying on Gaspari is improper and should be withdrawn.

Claim Rejections - 35 U.S.C. §103(a) (Gaspari in view of Bonacci)

Claims 48-50 stand rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over Gaspari in view of Bonacci. The Applicant traverses this rejection.

In addition, since Bonacci neither teaches nor suggests a reversible double-sided head grip, the rejection of claims 48-50 under §103(a) relying on the combination of Gaspari and Bonacci is improper and should be withdrawn.

Claim Rejections - 35 U.S.C. §103(a) (Gaspari in view of Bonacci and Smerdon)

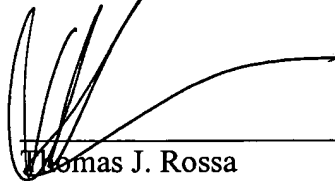
Claim 51 stands rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over Gaspari in view of Bonacci as applied to claims 48-50, and in further view of Smerdon. In view of the arguments presented for the allowance of claims 48-50, the Applicant traverses this rejection.

Conclusion

The rejection of claims 1-51 is deemed avoided. In turn, all claims should be allowable. Early action and allowance is respectfully requested for all pending claims. If there are questions, the Examiner can reach applicants' counsel at (801) 521-5800 or by e-mail at thom.rossa@HRO.com.

Please charge any fees not accompanying this communication that may be required to deposit account 08-2665.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas J. Rossa', is written over a horizontal line.

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